

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

DOMINQUE XAVIER THOMAS,

Petitioner,

v.

Civil Action No. **3:20CV975**

COMMONWEALTH OF VIRGINIA,

Respondent.

MEMORANDUM OPINION


On December 21, 2020, the Court received a document from Petitioner that he titled as a “MOTION FOR RECONSIDERATION.” (ECF No. 1.) Given the content of this document, the Court deemed it appropriate to give Petitioner the opportunity to pursue this action as a petition for a writ of habeas corpus under 28 U.S.C. § 2254. *See Rivenbark v. Virginia*, 305 F. App’x 144, 145 (4th Cir. 2008). Accordingly, by Memorandum Order entered on January 14, 2021, the Court sent Petitioner the form for filing a 28 U.S.C. § 2254 petition. The Court informed Petitioner if he wished to proceed pursuant to 28 U.S.C. § 2254, he must complete the § 2254 Petition form and return the same to the Court within twenty (20) days of the date of entry thereof. The Court warned Petitioner that the failure to return the § 2254 Petition form within twenty (20) days of the date of entry of its Order would result in the dismissal of the action. *See Fed. R. Civ. P. 41(b)*.

More than twenty (20) days have elapsed since the entry of the January 14, 2021 Memorandum Order and Petitioner has not responded. Accordingly, the action will be **DISMISSED WITHOUT PREJUDICE**.

An appeal may not be taken from the final order in a § 2254 proceeding unless a judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue unless a prisoner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). No law or evidence suggests that Petitioner is entitled to further consideration in this matter. The Court will DENY Petitioner a certificate of appealability.

An appropriate Order shall accompany this Memorandum Opinion.

Date: 19 March 2021
Richmond, Virginia

/s/ 

John A. Gibney, Jr.
United States District Judge